APPEAL NO. 020298
FILED MARCH 7, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 20, 2001. The hearing officer determined that the appellant (claimant) was not injured in the course and scope of his employment at the time of the motor vehicle accident (MVA) on _____, and that the claimant did not have disability. The claimant appeals, contending that he was in the course and scope of his employment at the time of the MVA because he was driving the rest of the crew home after work, and he was paid a per diem by the employer to do so. The respondent (carrier) replies, urging affirmance.

DECISION

Affirmed.

The issues and factual circumstances of this case involve virtually identical issues to those in our prior cases of Texas Workers' Compensation Commission Appeal No. 001420, decided August 2, 2000, and Texas Workers' Compensation Commission Appeal No. 010578, decided April 25, 2001. In Appeal No. 001420, *supra*, we affirmed the hearing officer's decision that the claimant was not in the course and scope of his employment at the time of the accident and injury but, rather, that he was merely returning from his place of employment when the accident occurred. In Appeal No. 010578, *supra*, we reversed the hearing officer's decision that the claimant was in the course and scope of his employment at the time of the accident and injury. The hearing officer found that the means of transportation was under the control of the employer, apparently grounded on the finding that the means of transportation was under the control of the claimant as a supervisor. We held that that decision was against the great weight of the evidence and that the conclusion of law that the claimant was injured in the course and scope of his employment at the time of the MVA was without sufficient factual foundation. We see no reason to deviate from precedent in deciding this case. The principles in the cited cases apply to this case, and an extensive discussion of the facts would not add anything significant to the body of law relating to course and scope of employment.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust, and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

We find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **PETROSURANCE CASUALTY COMPANY** and the name and address of its registered agent for service of process is

ROBERT CARLAN LEE
2301 EAST LAMAR BLVD., SUITE 362
ARLINGTON, TEXAS 76006.

Michael B. McShane
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge